

**Notice of Allowability**

Application No.

10/820,607

Examiner

Medina A. Ibrahim

Applicant(s)

KRAMER, JOACHIM ERNST

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the telephonic interview of 10/26/06.
2. ☒ The allowed claim(s) is/are 1-17 and 19-36 renumbered as 1-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                                 |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material         | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.  |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lila Akrad on 10/26/06.

The application has been amended as follows:

In The Claims:

At claim 15, "The maize" is replaced with ---Maize---.

At claim 16, ---F1--- is inserted before "hybrid".

At claim 17, "A" is replaced with ---An F1---.

Claim 18 is cancelled.

Claim 24 (Currently amended). The maize plant of Claim 23, wherein the single gene conversion was conferred by a transgene [was stably inserted into a maize genome by transformation].

Claim 26 (Currently amended). The maize plant of Claim 23, wherein the gene confers a trait selected from the group consisting of herbicide tolerance; insect tolerance; resistance to bacterial, fungal, nematode or viral disease; [yield enhancement;] waxy starch; [improved nutritional quality]; and male sterility [and restoration of male fertility].

Claim 27 (Currently amended). The maize plant of claim 26 [23], wherein said male sterility [plant] is conferred by a transgene [further defined as comprising a gene conferring male sterility].

Claim 28 (Currently amended). The maize plant of Claim 13, wherein said plant [is] further comprises [defined as comprising] a transgene conferring a trait selected from the group consisting of male sterility, herbicide resistance, insect resistance and disease resistance.

### ***Reasons For Allowance***

Applicant's response filed 10/06/06 in reply to the Request for Information under 37 CFR 1.105 has been considered. The claims drawn to F1 hybrid seed/plants of the inbred PH94T are deemed free of the prior art of record. Therefore, the Office has determined that the claims drawn to F1 hybrid plants/seed derived from maize inbred line PH94T have adequate written description, since the F1 hybrid plants/seed contain the unique haplotype of the inbred PH94T. Claims drawn to methods of using inbred PH94T to generate PH94T derived lines and PH94T plants further comprising a transgene or a single gene conversion are also considered to have adequate written description and are free of the prior art.

### **Contact information**

Any inquiry concerning this communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571) 272-0797. The

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Examiner can normally be reached Monday -Thursday from 8:00AM to 5:30PM and every other Friday from 9:00AM to 5:00 PM. Before and after final responses should be directed to fax nos. (703) 872-9306 and (703) 872-9307, respectively.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

10/25/06

Mai

MEDINA A. IBRAHIM  
PRIMARY EXAMINER

